

REMARKS

Reconsideration of this Application and entry of this Amendment after Final are respectfully requested. The proposed amendment places the claims in better form for appeal. Additionally, this amendment addresses items raised by the examiner in the final office action. In view of the amendments and following remarks, favorable consideration and allowance of the application is respectfully requested.

Claims 1, 5-7, 9, 11, and 27 remain in the application. Claim 2 was cancelled in the last amendment. Claim 5 has been amended to correct its dependency. No new matter has been added by way of this amendment.

35 U.S.C. §103 Rejections

The Examiner has considered the Declaration of D. Ruschke to be insufficient to overcome the 103 rejection since 37 CFR 1.47 applies only when an inventor cannot be reached. Accordingly, the rejection of Claims 1, 2, 5-7, 9, 11, and 27 under 35 USC 103(a) as obvious over US 5,443,458 (“Eury”) in view of WO01/07066 (“WO ‘066”) was maintained. As stated above, Claim 2 was cancelled in the last amendment.

Appended to this response is the 37 C.F.R. §1.131 Declaration of Robert L. Cafferata, which states that Inventor Cafferata reduced the invention to practice before 01 February 2001. Assuming, *arguendo*, that WO ‘066 is prior art, it only may be prior art under 35 U.S.C. § 102(a) as of its publication date, February 1, 2001. The concurrently-filed declaration and the evidence submitted therewith establish that the claimed invention was reduced to practice before February 1, 2001.

The Applicants have established that WO ‘066 is not prior art to the present application and Eury alone is insufficient to maintain the obviousness rejection. Accordingly, the Applicants respectfully request withdrawal of this rejection.

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Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-5021.

Respectfully submitted,

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